

AO 440 (Rev. 8/01) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

Southern

District of

New York

United States Securities and Exchange  
Commission

## SUMMONS IN A CIVIL ACTION

V.

Biovail Corporation, Eugene Melnyk, Brian  
Crombie, John Miszuk and Kenneth G. Howling

CASE NUMBER: 08 Civ. 02979 (LAK)

TO: (Name and address of Defendant)

Kenneth G. Howling  
c/o Carmen J. Lawrence, Esq.  
Fried, Frank, Harris, Shriver & Jacobson LLP  
One New York Plaza  
New York, NY 10004

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Todd Brody, Esq.  
United States Securities and Exchange Commission  
3 World Financial Center, Suite 400  
New York, NY 10281  
212-336-0080

an answer to the complaint which is served on you with this summons, within 30 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

**J. MICHAEL McMAHON**

**MAR 24 2008**

CLERK

DATE

(By) Jessica Doss  
DEPUTY CLERK

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<b>RETURN OF SERVICE</b>		
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE	
NAME OF SERVER ( <i>PRINT</i> )	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<div style="margin-bottom: 10px;"> <input type="checkbox"/> Served personally upon the defendant. Place where served: </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  Name of person with whom the summons and complaint were left: </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Returned unexecuted: </div> <div> <input type="checkbox"/> Other (specify): </div>		
<b>STATEMENT OF SERVICE FEES</b>		
TRAVEL	SERVICES	TOTAL \$0.00
<b>DECLARATION OF SERVER</b>		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____  <div style="display: flex; justify-content: space-around; width: 100%;"> <span>Date</span> <span>Signature of Server</span> </div>   <div style="text-align: center; margin-top: 20px;"> _____  Address of Server </div> </p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**-against-**

**BIOVAIL CORPORATION,  
EUGENE N. MELNYK,  
BRIAN CROMBIE,  
JOHN MISZUK, and  
KENNETH G. HOWLING,**

**Defendants.**

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**08 Civ. 02979 (LAK)  
ECF CASE**

**DECLARATION OF SERVICE**

I, CATHERINE SMITH, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a member of the Bar of this Court and an attorney for Plaintiff, United States Securities and Exchange Commission ("Commission"), and employed at the Commission's New York Regional Office.

2. On March 20, 2008, several days before the Complaint was filed, I spoke with Lanny A. Breuer, Esq., of Covington & Burling LLP, counsel for Defendant Eugene Melnyk. In that conversation, Mr. Breuer agreed to accept service of the Complaint and waive service of the Summons on behalf of his client in the above-captioned matter.

3. On March 24, the day the Complaint was filed, I served the Complaint in the above-captioned matter upon Eugene Melnyk by causing a true and correct copy of the Complaint to be transmitted by Federal Express for overnight delivery to his attorney, Mr.

Breuer, at his offices. In addition, at Mr. Breuer's request, I sent him a PDF copy of the Complaint by electronic mail to his email address: [lbreuer@cov.com](mailto:lbreuer@cov.com).

4. Also on March 20, 2008, I spoke with David M. Becker, Esq., of Cleary Gottlieb Steen & Hamilton LLP, counsel for Defendant Brian Crombie. In that conversation, Mr. Becker agreed to accept service of the Complaint and waive service of the Summons on behalf of his client in the above-captioned matter.

5. On March 24, 2008, I served the Complaint in the above-captioned matter upon Brian Crombie by causing a true and correct copy of the Complaint to be transmitted by Federal Express for overnight delivery to his attorney, Mr. Becker, at his offices. That same day, I sent Mr. Becker a PDF copy of the Complaint by electronic mail to his email address: [dbecker@cgsh.com](mailto:dbecker@cgsh.com).

6. On March 20, 2008, I spoke with Carmen J. Lawrence, Esq., of Fried, Frank, Harris, Shriver & Jacobson LLP, counsel for Defendant Kenneth G. Howling. In that conversation, Ms. Lawrence agreed to accept service of the Complaint and waive service of the Summons on behalf of her client in the above-captioned matter.

7. On March 24, 2008, I served the Complaint in the above-captioned matter upon Defendant Kenneth G. Howling by causing a true and correct copy of the Complaint to be transmitted by Federal Express for overnight delivery to his attorney, Ms. Lawrence, at her offices. That same day, I sent Ms. Lawrence a PDF copy of the Complaint by electronic mail to her email address: [lawreca@friedfrank.com](mailto:lawreca@friedfrank.com).

8. On March 20, 2008, I spoke with Thomas Kuczajda, Esq., of Cadwalader, Wickersham & Taft LLP, counsel for Defendant John Miszuk. In that conversation, Mr. Kuczajda agreed that his firm would accept service of the Complaint and waive service of the

Summons on behalf of its client in the above-captioned matter. Jodi Avergun, Esq., of Cadwalader confirmed that agreement when I spoke with her on March 21, 2008.

9. On March 24, 2008, I served the Complaint in the above-captioned matter upon Defendant John Miszuk by causing a true and correct copy of the Complaint to be transmitted by Federal Express for overnight delivery to his attorney, Bruce A. Hiler, Esq., of Cadwalader, at his offices. That same day, I sent Mr. Hiler a PDF copy of the Complaint by electronic mail to his email address: Bruce.Hiler@cwt.com.

10. I declare under penalty of perjury that the foregoing is true and correct.

Executed: March 26, 2008  
New York, New York

s/ Catherine Smith  
CATHERINE SMITH  
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Securities and Exchange Commission  
New York Regional Office  
3 World Financial Center  
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